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16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

18
19 LORINDA REICHERT,

20 Plaintiff,

21 vs.

22 TIME INC., ADMINISTRATIVE
COMMITTEE OF THE TIME
23 WARNER PENSION PLAN, and FMR
LLC,

24 Defendants.
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Case No. 3:11-cv-03592-WHA

**JOINT CASE MANAGEMENT
STATEMENT**

CMC Date: November 17, 2011
Time: 3:00 pm
Courtroom: Courtroom 8, 19th Floor
Judge: Hon. William H. Alsup

1 The parties jointly submit this Case Management Statement pursuant to
2 Federal Rule of Civil Procedure 26(f), Civil Local Rule 16-9, and the Standing
3 Order for All Judges of the Northern District of California – Contents of Joint Case
4 Management Statement.

5 6 **DESCRIPTION OF THE CASE**

7 8 **1. Jurisdiction and Service**

9 In this case, Plaintiff brought claims under the Employee Retirement Income
10 Security Act of 1974, 29 U.S.C. § 1001 et seq. (“ERISA”), contract claims under
11 California state law, and a professional negligence claim under California state law.
12 On November 3, 2011, the Court granted Defendants’ motion to dismiss in part,
13 dismissing Plaintiff’s state law claims, and denied the motion in part, allowing
14 Plaintiff to proceed with her claims alleging breaches of fiduciary duty under
15 ERISA against FMR LLC (“Fidelity”) and the Administrative Committee of the
16 Time Warner Pension Plan (“Administrative Committee”). This Court has subject
17 matter jurisdiction over this action pursuant to ERISA § 502(e) and (f), 29 U.S.C. §
18 1132(e) and (f).

19 All parties in this case have been served.

20 **2. Facts**

21 **a. Facts As Alleged by Plaintiff**

22 Plaintiff worked at Sunset Publishing Corporation, a subsidiary of Time Inc.
23 (“Time”), for over forty years. In 2009 her position was eliminated and her
24 employment was terminated. She negotiated a severance agreement with Time,
25 which the parties executed in February 2009 (“Severance Agreement”).

26 Suspecting that she might be laid off, and concerned about retiring earlier
27 than planned, Ms. Reichert looked closely at her finances, including her projected
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1 pension benefits under the Time Warner Pension Plan (“Pension Plan”) and the
2 Time Warner Excess Benefit Pension Plan (“Excess Benefit Pension Plan”)
3 (collectively the “Pension Plans”). She received at least ten pension statements
4 from Defendants Time and FMR LLC (“Fidelity”), which provided administrative
5 services related to the Pension Plans. The statements consistently indicated that Ms.
6 Reichert was entitled to approximately \$1.7 million in pension benefits.

7 It was extremely important to Ms. Reichert that she understood where she
8 stood financially before negotiating her Severance Agreement with Time. For this
9 reason, she requested written confirmation of her pension benefits, and then
10 negotiated to attach a pension statement to the Severance Agreement. Nevertheless,
11 in July 2009, after being told otherwise for more than a year, Ms. Reichert was
12 informed that her pension benefits had been overstated – by more than sixty percent.

13 Fidelity and the Administrative Committee are fiduciaries of the Pension
14 Plan. Plaintiff alleges that these defendants have breached their fiduciary duties
15 owed to Ms. Reichert under ERISA by failing to ensure that Ms. Reichert received
16 accurate information regarding her benefits.

17 **b. Fact As Alleged By Defendants**

18 Plaintiff was employed by Sunset Publishing Corporation (“Sunset”) for forty
19 years, the last nineteen of which were spent at Time Inc. (“Time”) after Sunset was
20 acquired by Time in 1990. For the nine years prior to her termination in February
21 2009, Plaintiff’s position was Vice President of Administration and Manufacturing,
22 where she had responsibility for administration of employee benefits.

23 Starting in 1999, Plaintiff became a participant in the Time Warner Pension
24 Plan (“Pension Plan”), and her prior pension benefits at Sunset were separately
25 preserved. Over the course of the next ten years, she was provided with numerous
26 personalized reward statements that accurately summarized her benefits. In May
27 2008, Ms. Reichert received a personal pension estimate projecting that her

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1 aggregate benefits under the Pension Plan and Excess Benefit Pension Plan, if taken
2 in a lump sum at age 65, would be \$717,000.

3 The packet Plaintiff received in May 2008 also explained that an online
4 pension calculator would be made available in June 2008. That online calculator
5 warned participants that its estimates might not be accurate and that actual benefits
6 could not be determined and verified until time of retirement or termination and that,
7 if the estimate differed from Pension Plan terms, the terms of the Plan would
8 govern. When plaintiff used the online calculator in June – just one month after
9 receiving her May estimate – the online estimate projected that her aggregate
10 benefits were approximately double that of the May estimate (and the historical
11 estimates). This overstatement of benefits was caused by a data entry error in the
12 newly implemented online calculator: all of her prior years of service at Sunset were
13 being included in the calculation of “years of service,” rather than just her 10 years
14 of service as a participant in the Time Warner plan in 1999.

15 As a result of her position, in at least as early as July 2008, Plaintiff learned of
16 a similar error in the online calculation of benefits for another Sunset employee, and
17 she knew the Company was investigating that error. Plaintiff knew that the online
18 estimate of her benefits was grossly inaccurate, but unlike this other Sunset
19 employee (who raised the error with Plaintiff’s subordinate), Plaintiff did not bring
20 it to the attention of anyone at Time.

21 Plaintiff’s employment was involuntarily terminated due to position
22 elimination in early 2009. She was offered severance benefits and she ultimately
23 received the maximum amount of severance that she could possibly receive under
24 severance plan strictures. In other words, regardless of whether she knew that her
25 actual pension benefits were going to be lower than those set forth in the erroneous
26 estimate, she could not have negotiated any more favorable severance terms than
27 what she actually received. Accordingly, Plaintiff was not harmed in any manner by
28 her claimed reliance on the inaccurate pension estimate.

1 **3. Identification of Issues in Dispute**

2 **a. Disputed Legal Issues**

3 1. Whether the Administrative Committee and/or Fidelity breached
4 their ERISA fiduciary duties, if any, in the provision of
5 statements containing inaccurate pension estimates to Ms.
6 Reichert.

7 2. If any Defendant is found liable, to what relief is Ms. Reichert
8 entitled, if any.

9 **b. Disputed Factual Issues**

10 **i. Plaintiff's Disputed Factual Issues**

11 1. Whether Ms. Reichert's job duties included human
12 resources responsibilities related to pension benefits
13 such that she knew or should have known that the
14 pension statements from Time and/or Fidelity were
15 inaccurate.

16 2. Whether Time had reason to suspect that a major
17 error had occurred in the calculation of Ms.
18 Reichert's pension benefits prior to execution of the
19 severance agreement.

20 **ii. Defendants' Disputed Factual Issues**

21 1. Whether Reichert reasonably and detrimentally
22 relied on the incorrect pension estimates.

23 2. Whether Reichert was harmed by the
24 incorrect pension estimates and, if so, how was she
25 harmed.

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1 **4. Motions**

2 The only pre-trial motions the parties contemplate at this time are cross-
3 motions for summary judgment. The parties propose cross-motions for summary
4 judgment with a briefing schedule set forth below.

5 **5. Amendment of Pleadings**

6 Following the Court's November 3, 2011 ruling on Defendants' motion to
7 dismiss, Defendants will file an answer on November 17, 2011.

8 Also pursuant to the Court's November 3, 2011 ruling, Plaintiff expects that
9 she will amend the complaint after conducting discovery, on or before March 8,
10 2012, as permitted by the Court's order.

11 Defendants will file a responsive pleading to the Amended Complaint under
12 the deadlines established by the Federal Rules of Civil Procedure.

13 **6. Evidence Preservation**

14 The parties confirm that counsel have communicated to clients the
15 requirement that all evidence that may be relevant to this litigation be preserved.

16 **7. Disclosures**

17 The parties served initial disclosures pursuant to Federal Rule of Civil
18 Procedure 26(a)(1), on October 26, 2011.

19 **8. Discovery**

20 The parties filed a proposed Stipulated Protective Order on October 6, 2011.
21 Docket No. 20. The Court issued an Order Approving Stipulated Protective Order
22 Subject to Stated Conditions that same day. Docket No. 21.

23 Other than serving initial disclosures, the parties have not yet engaged in
24 discovery. The parties request no modification of the limitations on discovery set
25 forth in the Federal Rules of Civil Procedure.

26 The Parties contemplate written discovery and depositions relating to the
27 factual issues identified in Section 3(B) above, and any other relevant subject
28 matter.

1 **9. Class Action**

2 Not applicable.

3 **10. Related Cases**

4 None.

5 **11. Relief**

6 Plaintiff seeks equitable relief in the form of surcharge and/or reformation to
7 allow her to recover the difference between the amount of pension benefits under
8 the Pension Plan reflected in the numerous pension statements Plaintiff received
9 between June 2008 and February 2009, on the one hand, and the amount to which
10 Defendants contend Plaintiff is entitled, on the other hand, plus pre- and post-
11 judgment interest in an amount to be determined, to make her whole for the
12 breaches of fiduciary duty by Defendants.

13 Defendants dispute that Plaintiff is entitled to any relief because she is
14 receiving her full benefits under the terms of the Pension Plan and has not lost any
15 pension benefits under the Pension Plan. Defendants contend that neither surcharge
16 nor reformation are permissible remedies and that no relief is proper.

17 **12. Settlement and ADR**

18 The parties are agreeable to a court-sponsored mediation through the court's
19 Alternative Dispute Resolution office. The parties had two telephone calls with the
20 ADR office. As discussed with the ADR office during the calls, the parties will
21 agree to a list of five potential mediators and provide a list to the ADR office
22 ranking their preference of mediators. The parties intend to mediate as soon as
23 practicable. The parties request a deadline to complete ADR of 90 days after
24 Defendants file an answer.

25 **13. Consent to Magistrate Judge For All Purposes**

26 Defendants declined to proceed before a U.S. Magistrate Judge.
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1 **14. Other References**

2 This case is not suitable for reference to binding arbitration, a special master,
3 or the Judicial Panel on Multidistrict Litigation.

4 **15. Narrowing of Issues**

5 The parties do not see a means to narrow the issues other than through the
6 above-described anticipated cross-motions for summary judgment.

7 **16. Expedited Trial Procedure**

8 Please see the proposed schedule in item No. 17.

9 **17. Scheduling**

10 The parties propose the following dates:

11 3/8/2012: Deadline for Plaintiff to amend complaint (per Court's Nov. 3,
12 2011 Order)

13 4/9/2012: Deadline for Defendants to file a responsive pleading if Plaintiff
14 amends complaint

15 6/8/2012: Discovery cut-off

16 7/13/2012: Deadline for filing motions for summary judgment

17 8/2/2012: Deadline for filing opposition briefs to summary judgment

18 8/16/2012: Deadline for filing reply briefs

19 8/23/2012: Pre-trial conference, if necessary

20 9/17/2012: Trial, if necessary

21 **18. Trial**

22 If a trial is necessary, the parties anticipate a three-day bench trial.

23 **19. Disclosure of Non-Party Interested Entities of Persons**

24 The parties have complied.

25 **20. Other Matters**

26 None at this time.
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1 DATED: November 10, 2011

LEWIS, FEINBERG, LEE,
RENAKER & JACKSON P.C.

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By /s/ Kirsten G. Scott
Kirsten G. Scott
Attorneys for Plaintiff

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DATED: November 10, 2011

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CHRISTOPHER G. CALDWELL

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By /s/ Christopher G. Caldwell
CHRISTOPHER G. CALDWELL
Attorneys for Defendants

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